

OPINION
56-63

August 8, 1956 (OPINION)

COUNTIES

RE: Estate Taxes - Transfer of Probate

In your letter of August 2, 1956, you ask for an opinion on which county is entitled to the proceeds of estate taxes when the probate of an estate has been transferred to an adjoining county under the provisions of section 27-0720.

Section 27-0720, after setting out the method of transfer, provides:

" * * * Thereafter, the county court to which such proceeding has been transferred shall exercise the same authority and jurisdiction over it and over all matters relating to the administration thereof as if it had original jurisdiction thereof." Section 57-3714 provides:

"The county court having jurisdiction over any estate shall assess the estate tax payable thereon before the final decree of distribution of the estate has been made." (Emphasis supplied).

Section 57-3724 provides, in part, as follows:

"The county treasurer in the county where the probate is had shall collect the tax levied under this chapter, and shall certify the same to the county auditor at the end of each calendar month. He shall pay over to the state treasurer thirty-five percent of such tax, and shall retain sixty-five percent thereof, which he shall deposit to the credit of the general fund of the county * * *." (Emphasis supplied).

A reading of these statutes leads inevitably to the conclusion that the county to which the proceeding is transferred is entitled to the tax proceeds since that county had full jurisdiction and is the "county where the probate is had."

The fact that the decedent was a resident of the transferring county and may have had property there is not as important as it first may seem when it is remembered that an estate tax is a tax upon the transfer of property and not upon the property itself. Section 57-3701 of our code illustrates this fact. It reads in part as follows.

"A tax is hereby imposed upon the transfer of the net estate of every decedent, * * *." (Emphasis supplied).

Probably this same fact is the reason that tax proceeds are not apportioned among counties when a decedent dies leaving real property in two or more counties in this state.

This office is therefore of the opinion that the county to which the proceedings have been transferred is entitled to the tax proceeds.

LESLIE R. BURGUM

Attorney General